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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | **CRIMINAL APPEAL NO.767/2004** | |
| | **APPELLANTS** (In Jail) | 1. Jaheer Ansari, S/o Usman @ Ismail Ansari, Aged about 40 years, Occupation-Tailor, R/o Khallari, P.S. Khallari, Mahuva Ghoda (Behind Bukbuka Masjid), District Ranchi (Jharkhand)<br>2. Ajay Tirki @ Rajkumar @ Suresh Munda, S/o Husaini Munda, Aged about 35 years, Occupation Business, R/o Nagri, P.S. Kake, District Ranchi (Jharkhand)<br>3. Ravindra @ Dharmendra Singh, S/o Ramdev Singh, Aged about 26 years, Occupation Bus Agent, R/o Chaliyo, P.S. Chanho, District Ranchi (Jharkhand) |
| | Vs | |
| | **RESPONDENT** | State of Chhattisgarh Through the S.H.O. of P.S. Jhilmili (Bhaiyathan), District Surguja. |
| | Present:<br>Mr. O.P. Yadu, Advocate for the appellants.<br>Mr. N.K. Mehta, Panel Lawyer for the respondent-State. | |
| | **ORAL JUDGMENT** | |
| | (9th August, 2007) | |

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आदेश पत्रक (पूर्वानुबद्ध)

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**Per Dhirendra Mishra, J:**

This appeal is directed against the judgment of conviction and order of sentence dated 31st August, 2004 passed by learned 4th Additional Sessions Judge (FTC) Surajpur, Distt. Surguja in Sessions Trial No.93/02 whereby learned Additional Sessions Judge has convicted the appellants under Section 395 read with Section 397 of the IPC & Section 27 (1) of the Arms Act and sentenced each of the appellants to undergo R.I. for 10 years and R.I. for 3 years respectively.

Case of the prosecution, in brief, is that on 11.10.2001 complainant Hashmi Ashraf (PW-2) was looking after the Marshall jeep owned by his maternal grandfather Shri Gulam Hassan, whereas, Hazrat Khan (PW-1) was the driver of the said jeep. The said jeep was hired by five persons for the purposes of going Pandopara colliery from Vishrampur. While they were proceeding towards Pandopara, the occupants of the jeep directed the driver to take the jeep towards Baskar forest and there one of the passengers alighted from the jeep on the pretext of easing himself and at that point other four occupants on the point of Katta compelled the complainant & the driver to come out of the

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**आदेश पत्रक (पूर्वानुबद्ध)**

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jeep, they were taken inside the forest, there they were injected some medicine and thereafter, the accused persons tied their hands & feet and gagged their mouth with the help of cloth, as a result of which they became unconscious. When he gained consciousness, he searched for the driver with the help of one Doctor Kushwaha. While they were searching the jeep near temple of Badsara, they saw the same jeep speeding towards Bhaiyathan road. They tried to stop the jeep but it did not stop. The said jeep was used for the purposes of Central Bank robbery.

It is stated that the accused persons were also prosecuted in another offence in connection with the bank robbery and they have already been convicted and sentenced to undergo R.I. for 10 years vide judgment dated 24.4.2002.

Report was lodged by the complainant in the Police Station Patna, District Koriya, which was recorded as Dehati F.I.R. by PW-22 Shri R.P. Singh, however, since the offence pertains to the Police Station Jhimili Bhaiyathan, the same was transferred to the Police Station Jhilmili. On the basis of above report, investigation was commenced and after completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class,

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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Surajpur against the appellants and also against two absconding accused persons under Section 395/397 of IPC and Section 27 (1) of the Arms Act. After committal, the appellants were charged under the aforesaid sections. Twenty two witnesses were examined by the prosecution. Learned court below after recording the statement of accused and hearing learned counsel for the parties, convicted & sentenced the appellants as mentioned in Para 1 of this judgment.

Learned counsel for the appellant submits that the conviction of the appellants is based on the statements of alleged eyewitnesses namely Hazrat Khan (PW-1) & Hashmi Ashraf Siddique (PW-2) who also accompanied the accused persons on the date of incident in the said jeep. Referring to Para 9 of the statement of PW-1 Hazrat Khan it has been argued that this witness was not acquainted with the accused persons, he has deposed as per instruction of the police personnel and therefore, the court below was not justified in basing the conviction on the basis of statement of this witness. It is further contended that PW-2 Hashmi Ashraf Siddique claims to be an eyewitness of the incident, however, in the test identification parade conducted by Shri S.L. Markam (PW-14), accused persons were not got

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**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

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identified by this witness, which is indicative of the fact that he was not present in the jeep and he is a cooked-up witness.

On the other hand, learned Panel Lawyer for the State supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the evidence available on record including the impugned judgment.

Conviction of the appellant is based on the statement of Hazrat Khan (PW-1) & Hashmi Ashraf Siddique (PW-2). Hazrat Khan (PW-1) has stated that the accused persons, who are present in the court, had hired their jeep one year before. They had claimed themselves to be the officers of the SECL before his master and said that they were going for the purpose of survey of Pandopara. On the day when the vehicle was hired, he had taken the accused persons to Vishrampur, however, after some time they stated that they shall be going tomorrow and also paid Rs.100/- as expenses towards the journey and asked them to come in the next day morning at 8.00 and he reached in the morning, as asked by the accused persons. When he reached, he found accused Ajay Tirkey waiting for the jeep, he took him inside the

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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Hotel Anand where three other accused persons were sitting, out of them two accused persons i.e. Jaheer & Ravindra Singh are present in the Court, whereas, third is not present in the court. All the three accused persons went by jeep to Dhaneshri Hotel where two other persons occupied the jeep. After filling diesel in the jeep, they paid for diesel and thereafter they proceeded towards Pandopara. On the way, they stopped for meals. Hashmi Ashraf (PW-2) was also present with him. They also dined in the Dhaba. However, before reaching Pandopara, accused persons asked them to turn towards Badsara forest and thereafter they were forced to alight from the jeep on the point of Katta. They were injected some medicine, their hands & feet were tied and their mouth was also gagged. The accused persons told them that they have taken the contract of killing someone and they shall leave their jeep in Manendragarh and saying so they left the place. When he regained consciousness he freed himself. In the meanwhile, Hashmi Ashraf & Dr. Kushwaha came there and helped him in freeing his feet and legs. While they were drinking water near a well they saw the same Marshall jeep and later on, they were informed that this jeep was used for bank robbery at Pandopara. In the cross examination, this witness has admitted

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**आदेश पत्रक (पूर्वानुबद्ध)**

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that he does not know that the accused are residents of which place, as he did not recognize them and he has stated what has been told to him by the police. He has further stated on re-examination by the prosecution that he does not recognize them is correct.

Similar is the statement of Hashmi Ashraf (PW-2), who has also narrated the incident in the same sequence. This witness has admitted that he did not participate in the test identification parade, however, he recognized accused Zaheer by name, as his name was called during the court proceedings and he does not recognize the accused persons personally. He has further stated that the report of Ex.P-1 was recorded as per information given by him.

PW-12 Gulam Hassan is the registered owner of the jeep and he has stated that PW-1 Hazrat Khan is the driver, on 10.10.2001 he had gone with the said jeep to Vishrampur and thereafter on the next day also his jeep had gone on hire. After a week the driver had told him that five persons had taken the jeep on the pretext of survey and on way he and his grandson Hashmi Ashraf were left in the forest after tying them and the vehicle

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**आदेश पत्रक (पूर्वानुबद्ध)**

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was taken. He was informed by the police that his vehicle was used for the purposes of dacoity.

Thus, from the statement of Hazrat Khan (PW-1) & Hashmi Ashraf (PW-2), it is evident that they have identified the appellants during trial, they have specifically stated the particular acts of the appellants during the incident and there is no cross examination of these witnesses from the defence side regarding their participation. Even no suggestion has been made that the accused persons were not present in the jeep, as alleged by these witnesses, and as such the statement of these witnesses in the examination-in-chief stands un-rebutted. Therefore, only on the basis of the admission of Hazrat Khan (PW-1) that he does not recognize the appellants cannot be construed that this witness did not see what he has stated in his examination-in-chief.

It is an admitted fact that the appellants and the above witnesses were not acquainted to each other since before and therefore, the admission of the witness that they did not recognize may be construed that he did not recognize them since before. The statement of these witnesses is duly corroborated by Dehati Nalishi of Ex.P-1, which has been proved by PW-2

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आदेश पत्रक (पूर्वानुबद्ध)

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Hashmi Ashraf as well as PW-22 R.P. Singh, who has recorded the same. The fact that the test identification parade was conducted by PW-14 has also been proved by this witness though PW-2 has not participated in the test identification parade.

Nevertheless, the statement of these witnesses inspire confidence of this Court regarding participation of the accused persons in the crime in question and this Court is of the considered opinion that there is no infirmity or illegality in the impugned judgment whereby the appellants have been convicted and sentenced under Section 395/397 of IPC & Section 27 (1) of the Arms Act.

Learned counsel for the appellants submits that the appellants were arrested on 24.10.2001, as is evident from the charge sheet, however, the trial court has directed that the appellants shall not be entitled for set off from the jail sentence imposed upon them for the period from 24.10.2001 to 24.4.2002, which is not proper particularly in the light of the fact that both the offences i.e. dacoity of jeep and bank robbery, forms part of the same prosecution and committed by the same persons.

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**आदेश पत्रक (पूर्वानुबद्ध)**

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Therefore, the period from which they were in jail ought to have been set off against the sentence imposed upon the appellants.

But I am unable to accept this argument because even before the judgment of conviction and order of sentence was passed in the present case, the appellants stood convicted in connection with S.T. No.62/02 vide judgment dated 24.4.2002 and in the said judgment the period of sentence from 24.10.2001 to 24.4.2002 was set off and in these circumstances, the trial court has directed that sentence shall commence from 25.4.2002 in view of the provisions of Section 427 of the Cr.P.C. The above observation of the trial court is in accordance with law and the same does not call for any interference by this Court.

In the result, the appeal being devoid of substance is liable to be dismissed and it is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-